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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/760,205	01/12/2001	Ralf Zielenski	RDID0013US	2666

23690 7590 09/06/2002

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EXAMINER
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GITOMER, RALPH J

ART UNIT	PAPER NUMBER
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1627

DATE MAILED: 09/06/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/760,205

Applicant(s)  
Zielenski

Examiner  
Ralph Gitomer

Art Unit  
1627



— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Jun 14, 2002.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 18-53 is/are pending in the application.
- 4a) Of the above, claim(s) 46-53 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

The amendment received 6/14/02 has been entered and claims 18-53 are currently pending in this application.

5 Newly submitted claims 46-53 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The new claims are directed to a method of stabilizing which is distinct and independent from the previously claimed inventions directed to a composition, a  
10 method of determining a concentration of a substrate and a kit for determining the same.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution  
15 on the merits. Accordingly, claims 46-53 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

20 In view of the amendments to the claims, the rejection of record under 35 USC 112, second paragraph, is hereby withdrawn.

The rejection of record of claims 18-45 under 35 USC 103 over Aoyama is maintained.

Applicant's arguments filed 6/14/02 have been fully considered but they are not persuasive.

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Applicant argues that the object of Aoyama is to stabilize the dehydrogenase but not the coenzyme. The object of the present invention is to stabilize NAD or NADH.

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Applicants are reminded that the invention is the subject matter defined by the claims, and the limitations of the specification are not read into the claims where no express statement of that limitation is included in the claims, see *In re Priest*, 199 USPQ 11.

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It is the examiner's position that as claimed, the invention is obvious over Aoyama because no degree of stability is claimed that would render Aoyama distinct from the claims. Further, the compositions of Aoyama are described as stable and therefor it would be presumed all the components of the compositions would be stable including the NADH.

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The title of the invention is not aptly descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

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**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ralph Gitomer whose telephone number is (703) 308-0732. The examiner can normally be reached on Tuesday-Friday from 8:00 am - 5:00 pm. The examiner can also be reached on alternate Mondays. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph McKane can be reached on (703) 308-4537. The fax phone number for this Art Unit is (703) 308-4556. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1235. For 24 hour access to patent

Serial No. 09/760,205  
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application information 7 days per week, or for filing applications electronically, please visit our website at [www.uspto.gov](http://www.uspto.gov) and click on the button Patent Electronic Business Center for more information.

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Ralph Gitomer  
Primary Examiner  
Group 1627

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RALPH GITOMER  
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GROUP 1200